STATE OF MICHIGAN

IN THE SUPREME COURT

TAXPAYERS OF MICHIGAN AGAINST CASINOS, a Michigan non-profit corporation, and LAURA BAIRD, State Representative, Michigan House of Representatives, in her official capacity,

Plaintiffs/Appellees/Cross-Appellants,

v

STATE OF MICHIGAN,

Defendant/Appellant/Cross-Appellee,

and

NORTH AMERICAN SPORTS MANAGEMENT COMPANY, INC., IV, a Florida corporation, GAMING ENTERTAINMENT (Michigan), LLC, a Delaware limited liability company, and LITTLE TRAVERSE BAY BAND OF ODAWA INDIANS,

Intervening Defendants/Appellants/ Cross-Appellees.

/

Supreme Court No. 129816

Court of Appeals No. 225017
Ingham Cir Court No. 99-090195-CZ

THIS APPEAL INVOLVES A RULING THAT A STATE GOVERNMENTAL ACTION IS INVALID

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BASIS OF JURISDICTION AND RELIEF REQUESTED

TOMAC appeals, under Michigan Court Rule 7.301(A)(2), the Court of Appeals' September 22, 2005 decision in *Taxpayers of Michigan Against Casinos v State*, 268 Mich App 226; 708 NW2d 115 (2005) ("*TOMAC II*"), on remand from this Court's decision in *Taxpayers of Michigan Against Casinos v State*, 471 Mich 306, 333; 685 NW2d 221 (2004) ("*TOMAC I*"). This Court granted TOMAC's Application for Leave to Appeal on March 29, 2006.

TOMAC's appeal asks whether *TOMAC I* had the effect of overruling *Tiger Stadium Fan Club, Inc v Governor*, 217 Mich App 439; 553 NW2d 7 (1996). In *Tiger Stadium*, the Michigan Court of Appeals held that revenue sharing payments under State-Tribal compacts are "gratuitous payments," rather than bargained for contractual consideration, and therefore not subject to the Michigan Constitution's Appropriations Clause. This Court's primary holding in *TOMAC I*—that gambling compacts are "valid contracts"—necessarily overrules *Tiger Stadium* and thus requires a legislative appropriation before any compact payments can be diverted to a source other than the State Treasury. The compacts at issue, both in their original and amended forms, do not direct revenue sharing payments to the Treasury, and are not supported by a legislative appropriation. The compacts are therefore unconstitutional.[1]

TOMAC respectfully requests that this Court formally recognize that *TOMAC I* overruled the Court of Appeals decision in *Tiger Stadium*, and declare the compact payment terms—both in their original forms and as unilaterally amended by Governor Granholm—

[1] The State and the Tribe opposed TOMAC's application on the ground that this issue was not ripe for review. TOMAC vigorously disputed that argument (*see* TOMAC's Reply Br in Support of Application for Leave to Appeal at 5-10), and this Court rendered the argument moot when it granted TOMAC's application. *See Huey v Campbell, Wyant & Cannon Foundry*, 55 Mich App 227, 231; 222 NW2d 191 (1974) ("Since this is the sole issue raised by plaintiff on appeal, and since this Court has already granted plaintiff leave to appeal on this issue, it would be incongruous for us to now hold that the issue is not properly before us. Moreover, we consider this issue to be necessary to a proper resolution of this case and, therefore, will consider it.")

constitutionally infirm under the Appropriations Clause. Because those payment terms are strictly non-severable, TOMAC further requests that this Court invalidate the compacts in their entirety, permitting the executive and legislative branches to craft new compact terms that satisfy all constitutional prerequisites for validity.

QUESTIONS PRESENTED FOR REVIEW

1. Did this Court's decision in *Taxpayers of Michigan Against Casinos v State*, 471 Mich 306; 685 NW2d 221 (2004) ("*TOMAC I*"), have the effect of overruling *Tiger Stadium Fan Club, Inc v Governor*, 217 Mich App 439; 553 NW2d 7 (1996)?

The Court of Appeals declined to address this question.

TOMAC answers: Yes.

State and Interveners answer: No.

Authority: *Compare Tiger Stadium*, 217 Mich at 447-454; 553 NW2d 7 (Tribal-State compact payments were not State funds subject to the Appropriations Clause, but rather "gratuitous payments," in exchange for which the State "gave up nothing" and "did not concede or give away anything") *with TOMAC I*, 471 Mich at 312; 685 NW2d 221 ("[T]he Legislature simply expressed its approval of valid contracts between two independent, sovereign entities.") (emphasis added); *see also id.* at 337; 685 NW2d 221 ("A majority of Justices, myself included, hold that the tribal-state gaming compacts at issue are . . . contractual in nature, conveying the rights and obligations of the parties, the state and the various tribes.") (Kelly, J, concurring).

2. Does the Michigan Legislature have the power to appropriate state funds by resolution, rather than a legislative enactment?

The Court of Appeals declined to address this question.

TOMAC answers: No.

State and Interveners answer: Yes.

Authority: "No money shall be paid out of the state treasury except in pursuance of appropriations made by law." Const 1963, art 9, § 17 (emphasis added).

INTRODUCTION

This Court held in *TOMAC I* that Tribal-State gambling compacts are "valid contracts." This holding expressly rejected TOMAC's theory that compacts are "legislation," but it also implicitly rejected the Court of Appeals' characterization of gambling compacts in *Tiger Stadium* as instruments of "gratuitous transfer." As then-Chief Justice Corrigan presciently observed at oral argument:

> Can you help on the part that is bothering me the most on this, that is this provision on the governor's power to amend without consultation and the appropriations piece of this. I am starting to think that that *Tiger Stadium Fan Club* case was wrong, I am really bothered by that and I really want to know what you think about those pieces.

(3/11/04 Hr'g Tr at 2, App 111a (emphasis added).) This Court's implicit repudiation of *Tiger Stadium* is decisive, because if revenue sharing payments from the Tribes are not a mere gratuity, as *Tiger Stadium* held, they must either flow to the State Treasury alone, or enjoy the support of a corresponding legislative appropriation.

In both their original and amended forms, the compacts at issue direct revenue sharing payments directly to the Michigan Strategic Fund ("MSF"), or to another destination as designated by the Governor on her own, and not to the general Treasury of the State. The Legislature has never adopted a legislative appropriations bill to support this diversion of State money. The compacts' payment provision is therefore an unconstitutional diversion of hundreds of millions of dollars from the State Treasury. Moreover, because terms of the compacts themselves provide that the unconstitutional payment provision cannot be severed from the rest of the compact, this Court must declare the compacts in their entirety invalid.

This Court's invalidation of the compacts would allow the Legislature to address and correct not only this critical constitutional infirmity, but also the vexing practical problem

that currently faces the State: namely, that even though seventeen Tribal casinos are operating in Michigan today, only *one* Tribe is currently making revenue sharing payments to the State.[2] Recent news articles estimate that the State has already lost over $340 million in revenue sharing payments and stands to lose more than $680 million before the compacts expire. Jennifer Dixon, Special Report: Tribal Gaming: State is Losing a Casino Jackpot, Detroit Free Press, May 7, 2006, App 223a. By recognizing the constitutional infirmity that has been part of the compacts from their inception, this Court can pave the way for the Legislature to approve new and proper compacts that will ensure the State receives the revenue that is supposed to accompany the approval of Tribal casinos.

STATEMENT OF FACTS AND PRIOR PROCEEDINGS

In *TOMAC I*, this Court remanded to the Court of Appeals the constitutionality of amendments made by the Governor to one of the challenged compacts. 471 Mich at 333, 352; 685 NW2d 221. Among other things, the Governor's amendment changed the way that a Tribe would pay gambling revenue sharing moneys to the State, placing the appropriations issue—and the continued validity of *Tiger Stadium*—squarely before the Court of Appeals. The Court of Appeals declined to specifically address this important issue or to hold the payment provision invalid for lack of an accompanying legislative appropriation, but this Court properly granted leave on the question on March 29, 2006.

[2] Six of the original seven Tribes stopped paying when the four compacts at issue here became effective. *Sault Ste Marie Tribe of Chippewa Indians v Engler*, 217 F3d 235 (CA 6, 2001). The only two Tribes with casinos under the current four compacts have also refused to pay, and the State has sued them to enforce the payment obligation. *State of Michigan v Little River Band of Ottawa Indians*, Case No 5:05-cv-00095 (WD Mich, filed June 22, 2005), App 169a.

The Compacts and the Governor's Amendment

Michigan's Governor negotiated and signed four compacts with each of four Indian Tribes in January 1997. *TOMAC I*, 471 Mich at 316; 685 NW2d 221. The purpose of these compacts was to authorize four new Indian casinos in the State of Michigan. The compacts were modified and re-executed in December 1998, and the Michigan Legislature approved the compacts by resolution, rather than by bill, through HCR 115, App 27a. *Id.*

In Section 17(C), the compacts provide that the various Tribes will make semi-annual payments to the State, specifically, the Michigan Strategic Fund (the "MSF")—not the State Treasury—in an amount equal to 8% of the net win at the casino, derived from all Class III electronic games of chance. (Compacts § 17(C), App 21a-22a.)[3] The compacts also allow the Governor to amend their terms without additional legislative approval of any kind. The Governor, "who shall act for the State," merely informs the Legislature after the amendment is effective, after she has bound the State to whatever amendment provisions she approves. (Compacts § 16(A)-(D), App 20a-21a.)

Governor Granholm amended several provisions of the Odawa compact on July 22, 2003 (the "Governor's Amendment," App 61a), including the authorization of a second casino. In addition, Governor Granholm diverted the revenue sharing payments from the MSF so that all such payments would instead go "to the State, as directed by the Governor or designee." (Compact Amendment § 17(C), App 21a-22a.) Without the support of any legislative appropriation, then, the Governor can now send millions of dollars to whatever agency, department, or quasi-governmental unit she chooses.

[3] The pre-amendment version of this compact, between the State and the Little Traverse Bay Bands of Odawa Indians can be found at App 3a. The other three compacts are identical in all material respects.

This Court Holds the Compacts Are Contracts

In *TOMAC I*, this Court held that the compacts were valid contracts, and it remanded the issue of the amendment's validity to the Court of Appeals. This Court did not restrict the Court of Appeals' remand in any respect, leaving the Court of Appeals free to take any action that was consistent with *TOMAC I*, which should have included a reexamination of *Tiger Stadium*'s "gratuitous transfer" theory of Tribal-State compacting. (Indeed, as noted above, Justice Corrigan's comments at oral argument anticipated that very issue (3/11/04 Hr'g Tr at 2, App 111a.).)

TOMAC I's contract holding means the compacts can be neither legislation subject to the presentation and enactment requirements of Michigan's Constitution, as TOMAC had urged, nor an instrument of gratuitous payments, as *Tiger Stadium* held in reviewing analogous compacts. And without the "gratuitous payments" theory, the compacts' payment provision, both as originally approved and as amended by Governor Granholm, is invalid because it diverts revenue sharing payments away from the State Treasury without a corresponding legislative appropriation.

Moreover, by the compacts' express terms, the payment provision is not severable. (Compacts § 12(E), App 18a.) The compacts are therefore invalid in their entirety, and the Michigan Legislature will need to deal with the issue in an appropriate fashion. The Legislature could, for example, choose to condition any ratifying appropriation bill on reinstatement of the original 8% revenue sharing payments once required from any Tribe that conducts class III gaming in the State, or negotiate an even higher percentage.

The Court of Appeals' Ruling

On remand, the Court of Appeals addressed the validity of the compact's amendatory provision, correctly ruling that the provision violates the separation of powers found in Const 1963, art 3, § 2. *TOMAC II*, 268 Mich App at 246; 708 NW2d 115. TOMAC seeks no further relief related to this part of the ruling below. But the court "decline[d] to address plaintiffs' additional arguments" (*id.*), namely, that this Court's holding in *TOMAC I* renders the compact payment provisions (and thus the compacts themselves) invalid as an unconstitutional appropriation of State funds.[4] TOMAC now seeks a determination that *Tiger Stadium* is no longer good law, and that the Legislature does not have the power to appropriate State funds by resolution, in the compacts or otherwise.

STANDARD OF REVIEW

This Court reviews constitutional issues *de novo*. *Studier v Michigan Pub Sch Employees' Ret Bd*, 472 Mich 642, 649; 698 NW2d 350 (2005).

ARGUMENT

Three theories have competed in the Michigan courts to characterize the nature of a Tribal-State gambling compact. The Court of Appeals in *Tiger Stadium* articulated the first theory, which held that compacts involve "gratuitous payments," a holding necessary to save the constitutionality of payment provisions in the compacts directing revenue sharing funds to the MSF, rather than the State Treasury. TOMAC then asserted in this action the "legislation view," i.e., that the compacts effectively change the law in a way that requires a bill subject to the Enactment and Presentment Clauses of the Michigan Constitution. This Court in *TOMAC I*

[4] Before oral argument, the Court of Appeals granted Intervening Defendant Gaming Entertainment, LLC's Motion to Strike TOMAC's appropriations arguments. Judge Schuette dissented from this Order.

authoritatively adopted a third view; namely, that the compacts are "valid contracts." This contract view rejected the "legislation view" explicitly. It also implicitly rejected the *Tiger Stadium* "gratuitous payments" view, because a contract necessarily involves a bargained for exchange, not gratuitous payments.

TOMAC I thus raises the question of whether the Legislature could approve the Tribes' payments of casino revenue directly to the MSF (or, as amended, to whichever place the Governor designates) without a corresponding legislative appropriation. The answer is "no": State funds must be appropriated "by law" in accordance with Article 9, Section 17 of Michigan's Constitution. And because the compacts' payment provision is strictly non-severable, the compacts themselves are invalid. Accordingly, this Court should overrule *Tiger Stadium* and hold the compacts unconstitutional.

THE COMPACTS ARE NOT SUPPORTED BY A LEGISLATIVE APPROPRIATION AND ARE THEREFORE INVALID.

A. The compacts are enforceable contracts that require consideration.

This Court held in *TOMAC I* that Tribal-State gaming compacts are not instruments of gratuitous payment, but valid contracts: "The Legislature simply expressed its approval of valid contracts between two independent, sovereign entities." *TOMAC I*, 471 Mich at 312; 685 NW2d 221; *see also id.* at 337; 685 NW2d 221 ("A majority of Justices, myself included, hold that the tribal-state gaming compacts at issue . . . are contractual in nature, conveying the rights and obligations of the parties, the state and the various tribes.") (Kelly, J, concurring).

Unlike a gratuitous transfer, a valid contract must be supported by mutual consideration, exchanged by both parties. *Compare, e.g., Yerkovich v AAA*, 461 Mich 732, 740; 610 NW2d 542 (2000) ("An essential element of a contract is legal consideration") *with Higgins*

v Monroe Evening News, 404 Mich 1, 21; 272 NW2d 537, 544 (1978) (gratuitous promises do not create a contract). *See also* E. Allan Farnsworth, Contracts, p 49 (2d ed, 1990) ("The most significant class of promises unenforceable for lack of consideration is made up of purely gratuitous (or gift) promises – promises for which there has been no exchange at all.").

Tribal-State gambling compacts are no different than any other contract in this respect. As this Court held in *TOMAC I*, compacts require "mutual assent by the parties—a characteristic that is . . . the hallmark of a contractual agreement." 471 Mich at 323-324; 685 NW2d 221; *see also id.* at 342, 347; 685 NW2d 221 (Kelly, J, concurring) (describing the compacts as "mutual" agreements). Accordingly, the mutual promises the State and the Tribes made in the compacts are legally enforceable.

Although the State resists this conclusion in this dispute, it has unabashedly adopted TOMAC's position in other litigation, suing Tribes to enforce gambling compact payments as contractual commitments. For example, in *State of Michigan v Little River Band of Ottawa Indians*, Case No 5:05-CV-00095 (WD Mich, filed June 22, 2005), the State asserted that it had satisfied its contractual obligations under the compacts, and that the Tribe had to abide by its contractual promise to pay:

> Section 17 of each Compact requires payment to the State in exchange for the non-proliferation of gaming . . . . The refusal to make payments in accordance with Section 17 of each Compact . . . constitutes a breach of the compact . . . . Plaintiffs are irreparably harmed by Defendants' unilateral decision to cease payments, especially without an enforceable mechanism to recoup wrongly withheld payments.

(State Amended Compl ¶¶ 87-90 (App 188a) (emphasis added); *see also id.* ¶¶ 29, 36 (Section 17 of the compacts "required" the Tribes to make payments).) There is no real dispute, then, that the compacts are contracts that include legally binding payment obligations to the State.

B. Because compacts are contracts, *Tiger Stadium* is no longer good law.

This Court's holding that compacts are "valid contracts" implicitly overruled the Court of Appeals' gratuitous payment theory in *Tiger Stadium*. That case dealt with seven older State-Tribe gambling compacts, negotiated as part of a settlement of federal litigation against the State, and similarly approved by legislative resolution. The *Tiger Stadium* panel determined that compact revenue sharing payments were not State funds subject to the Appropriation Clause, because (1) the funds were merely "gratuitous payment[s]" in exchange for which the State "gave up nothing," 217 Mich App at 451, 452; 553 NW2d 7, and (2) the "gratuitous payments" were themselves specifically designated for the MSF, rather than the State itself, 217 Mich App at 452; 553 NW2d 7.

The logical converse of the *Tiger Stadium* holding is that if the revenue sharing payments were part of a bargained-for exchange, the payments would be State funds subject to appropriation.[5] Thus, this Court's holding that the compacts are actually valid contracts, supported by mutual assent and consideration, mandates that the revenue sharing payments be paid to the State Treasury or otherwise appropriated by law: "receipts of state government <u>from whatever source derived</u> shall be deposited pursuant to directives issued by the state treasurer and credited to the proper fund." MCL 18.1441. *See also Malone v State*, 285 Ala 493; 234 So 2d 32 (1970) (holding that moneys due the state under a contract are public funds or moneys "belonging to the State"); *cf.* 2 Joseph Story, Commentaries on the Constitution of the United

[5] Indeed, *contra Tiger Stadium*, there is a strong argument that even "gratuitous payments" must be appropriated. *See* OAG, 1978, No 5393 (Nov 28, 1978), App 1a (concluding that "if [the Legislature] wishes to authorize the expenditure of donations to the state or its agencies, the Legislature must approve such funds"). Any contrary rule would permit the Governor or other State officials to solicit donations to quasi-governmental units like the MSF and use them as a government-sanctioned slush fund, without legislative approval. The Court need not reach this question, however, because the holding in *TOMAC I* that the compacts are valid contracts necessarily makes the Tribal payments contractual consideration due to the State Treasury.

States § 1348 (3d ed, 1858) (federal appropriations power includes "all the taxes raised from the people, as well as revenues arising from other sources") (emphasis added).

The tension between gift and contract was evident in the State's reply during oral argument to Justice Corrigan's concern, quoted above, that *Tiger Stadium* was wrongly decided. The State's counsel responded:

> Now what *Tiger Stadium* correctly said was that as a matter of contract the governor can enter into negotiations with a tribe which agrees as a matter of its gratuitous action, it is not compelled to do this, can say we are going to pay X dollars to the Michigan Strategic Fund.

(3/11/04 Hr'g Tr at 2, App 111a (emphasis added).) In the State's view, then, it "negotiated" as a matter of "contract law" for a "gratuitous action" that the Tribe is "not compelled" to do, even though the State has sued Tribes for breaching their contractual obligations under such revenue sharing payment provisions. This tension highlights the incompatibility of the State's position and *Tiger Stadium*'s "gratuitous payments" theory, on the one hand, with this Court's decision that the compacts are "valid contracts." TOMAC respectfully requests that this Court explicitly overrule *Tiger Stadium* and hold that any revenue sharing payment pursuant to a gambling compact/contract is subject to the Appropriations Clause, as *TOMAC I* suggests.

C. Without a legislative appropriation, the compacts' payment provisions are unenforceable.

Because the compacts' revenue sharing payments are not gratuitous payments, but instead enforceable legal obligations, they must be paid directly to the State Treasury or be accompanied by a legislative appropriation. Without exception, State funds must be appropriated "by law" in accordance with Article 9, Section 17 of Michigan's Constitution, not by mere resolution. And by Constitutional definition, a "law" requires an affirmative vote by a majority of both branches of the Legislature. *See* Const 1963, art 4, § 26 ("No bill shall become

a law without the concurrence of a majority of the members elected to and serving in each house." (emphasis added)); *accord TOMAC I*, 471 Mich at 343-344; 685 NW2d 221 (quoting Black's Law Dictionary for the proposition that "legislation" is "the act of giving or enacting laws").

This Court held in *TOMAC I* that the Legislature could approve the compacts by resolution, rather than by bill, because the compacts were not legislation. But the Court also recognized that Article 4, Section 22 of Michigan's Constitution "requires the approval of *legislation* by bill. . . " *Id.* at 328 (emphasis in original). And appropriations are a classic legislative function. *Cf. Nat'l Assoc of Regional Councils v Costle*, 564 F2d 583, 589-590 (CA DC, 1977) ("[U]nless a court can rely on a statutory authorization, it simply lacks the power to order the obligation of public funds") (emphasis added). Lacking the requisite legislative appropriation, the compacts' payment terms are invalid, in both their original and amended forms.

The importance of the Legislature's ability to control the purse strings of government, including how to raise and spend State funds, is unquestioned. *See Civil Serv Comm of Michigan v Auditor Gen,* 302 Mich 673, 682; 5 NW2d 536 (1942) ("The right of the legislature to control the public treasury, to determine the sources from which the public revenues shall be derived and the objects upon which they shall be expended, to dictate the time, the manner, and the means both of their collection and disbursement, is firmly and inexpungably established in our political system."); *see also Malone v State,* 234 So 2d 32 (Ala, 1970) (holding that moneys due the state under a contract are public funds "belonging to the State."). Accordingly, when State funds are spent, Michigan law requires a legislative appropriation—not a mere resolution—to safeguard the people's money, ensure the balance of power, and defend

against corruption and extravagance. *Office of Personnel Mgmt v Richmond*, 496 US 414, 427; 110 S Ct 2465 (1990). For those very reasons, the Michigan Senate Majority Leader and the Michigan Appropriations Chair have agreed that the Governor's diversion of funds through the Governor's Amendment amounts to an illegal appropriation. (Brief of Amici Curiae Senate Majority Leader Ken Sikkema and Shirley Johnson, Appropriations Chair at 21-25, App 104a-108a.)

The need for an appropriation bill supporting diversion of tribal payments to the MSF is also evidenced by the fact that all other sources of the MSF's funding are treated as appropriations subject to the control of the Legislature, including disbursement of tobacco settlement revenue to the Fund. *See, e.g.,* 2003 PA 169, App 65a; *Financial Audit of the Michigan Strategic Fund (A Component Unit of the State of Michigan) October 1, 2001 through September 30, 2003*, App 191a. Because the Tribal payments are not supported by legislative appropriation, the compacts' revenue sharing payment provision is invalid.

D. The compacts' payment provision is non-severable, and so the compacts are invalid in their entirety.

The constitutional infirmity of the compacts' payment provision infects the compacts in their entirety because the payment provision is not severable. In the Court of Appeals, both the State and the Tribe tacitly conceded that the severability of any compact provision or amendment must be assessed in light of the compacts' severability clause. (State Br on Remand at 24; Tribe Br on Remand at 19.) And the compacts' severability clause explicitly states that the provision addressing revenue sharing payments, Section 17, is non-severable:

> In the event that any section or provision of the Compact . . . is held invalid by any court of competent jurisdiction, it is the intent of the parties that the remaining sections or provisions . . . shall continue in full force and effect. <u>This severability provision does not apply to Sections 17 and 18 of this Compact</u>.

(Compact § 12(E), App 18a (emphasis added).)

Since the compacts' non-severable payment provision is constitutionally invalid without a legislative appropriation, the compacts must also be invalid in their entirety. *See, e.g., Dumas v Auto Club Ins Assoc*, 437 Mich 521, 537; 473 NW2d 652 (1991) (holding that if the terms of a contract are non-severable, and part of the contract is invalid, the entire contract is unenforceable). Accordingly, this Court should declare the compacts invalid, giving the Legislature a clean slate on which to address non-payment issues in appropriate legislative action and ensuring that Michigan citizens experience not only the burdens, but also the purported benefits of Tribal casino expansion.

CONCLUSION

Tiger Stadium's "gratuitous payments" theory is fundamentally incompatible with this Court's determination in *TOMAC I* that Tribal-State gambling compacts are "valid contracts." *TOMAC I* necessarily leads to the conclusion that the compacts' payment provision—both in its original form and as unilaterally amended by Governor Granholm—is unconstitutional in the absence of a corresponding legislative appropriation. TOMAC respectfully requests that this Court so hold.

Unfortunately, the State is currently receiving virtually none of the promised revenue sharing payments that were supposed to accompany its approval of Tribal casinos. This Court's invalidation of the unconstitutional compacts will allow the State to renegotiate the compacts and provide for the constitutional appropriation of future revenue sharing payments in such a way that will ensure the State's receipt of the promised benefit. For all of these reasons, that portion of the Court of Appeals' opinion below that declined to address the appropriations issue should be reversed, and the compacts held invalid.

Dated: May 24, 2006

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